

MOBIL OIL EXPLORATION & PRODUCING, S.E.

IBLA 86-1220

Decided: October 6, 1988

Appeal from a decision of the Director, Minerals Management Service, denying in part a request for refund of overpaid royalties and directing payment of underpaid royalties. MMS-84-0069-OCS; MMS-84-0070-OCS.

Affirmed.

1. Oil and Gas Leases: Royalties--Outer Continental Shelf Lands Act: Refunds

Sec. 10(a) of the Outer Continental Shelf Lands Act, 43 U.S.C. | 1339(a) (1982), limits the authority of the Department to refund royalty overpayments to those cases where a refund request is filed within 2 years of making the overpayment.

2. Oil and Gas Leases: Royalties--Outer Continental Shelf Lands Act: Refunds

As a general rule overpayments of oil and gas royalties for which no claim for refund is filed within 2 years of the overpayment are properly disallowed as an offset or credit against liability for subsequent royalty underpayments.

APPEARANCES: Daniel P. LeFort, Esq., New Orleans, Louisiana, for appellants; Cass R. Butler, Esq., Office of the Solicitor, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE GRANT

This appeal is brought by Mobil Oil Exploration & Producing, S.E., and Mobil Oil Corporation (hereinafter collectively referred to as Mobil) from a March 4, 1986, decision of the Director, Minerals Management Service (MMS). That decision affirmed the rejection in part of Mobil's request for refund of overpaid royalties on offshore oil and gas leases 55-000057 through 60, and 55-000062, Ship Shoal Block 72, to the extent the royalty overpayments were made more than 2 years prior to the filing of the request for refund. The MMS decision also affirmed a related order to pay additional royalty in the amount of \$19,556.50 constituting the amount of underpayments (as amended) for those leases disclosed for the months of March and June 1982 in appellant's refund request.

This case commenced with the filing by Mobil on March 19, 1984, of a request for refund of net royalty overpayment in the amount of \$89,880.79 for the months of March 1981 through March 1982 and also for June 1982. Appellant explained that meter tickets during the period had been calculated incorrectly with the result that sales volumes were overstated for all months except March 1981 and March and June 1982, for which they were understated. Thus, Mobil's request showed underpayments of royalty in the months of March 1981 and March and June 1982 and overpayments of royalty in the months of April 1981 through February 1982. <sup>1/</sup> The amount of the refund requested by Mobil was the amount of the overpayments minus the amount of the underpayments.

By decision of August 23, 1984, the Tulsa Regional Compliance Office of MMS approved a refund of \$5,980.44, representing the overpayment of royalty for the month of February 1982, and disallowed the balance of the refund request. As grounds for the decision, MMS found that the overpayment for the production month of February 1982 was the only overpayment made within the 2-year period prior to filing the refund request as required by section 10(a) of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. | 1339(a) (1982).

Subsequently, by letter of October 11, 1984, the Tulsa Office of MMS billed Mobil for royalty underpayments in the amount of \$19,553.43 for the months of March and June 1982. <sup>2/</sup> This demand was "[b]ased on information contained in Mobil's request for refund and additional information supplied by Mobil."

On appeal to the Board from the decision of the Director, MMS, affirming these rulings, Mobil argues that any royalty overpayment should be offset against any royalty underpayment as long as not more than 2 years elapse between the two payments. Appellant cites Shell Oil Co., 52 IBLA 74 (1981), and Mobil Oil Corp., 65 IBLA 295 (1982), in support of its contention. Mobil argues that under Louisiana law when two parties are indebted to each other the two debts are reciprocally extinguished by operation of law. It further asserts that this net overpayment should be available to offset underpayments of royalties not only on the leases at issue here, but also on other leases for which royalties may have been underpaid.

Counsel for MMS responds that section 10 of OCSLA bars refund of royalty overpayments made more than 2 years prior to the filing of the refund request. MMS asserts that underpayments may not be offset against time-barred overpayments. MMS contends that the exception for the offset of overpayments against underpayments made during the period covered by an MMS audit initiated more than 2 years after the overpayment should not be

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<sup>1/</sup> Payments for the months of Apr. and May 1982 are not at issue in this dispute.

<sup>2/</sup> The present appeal does not involve a billing for the underpayment made in Mar. 1981.

extended to include time-barred overpayments disclosed by the payor in the absence of an audit.

[1] The key issue in resolving this appeal is the proper application of section 10(a) of OCSLA, which provides in pertinent part:

[W]hen it appears to the satisfaction of the Secretary that any person has made a payment to the United States in connection with any lease under this subchapter in excess of the amount he was lawfully required to pay, such excess shall be repaid without interest to such person or his legal representative, if a request for repayment of such excess is filed with the Secretary within two years after the making of the payment \* \* \*.

43 U.S.C. | 1339(a) (1982). This Board has held that this statute limits the authority to refund overpayments to those requests filed with MMS within 2 years of the overpayment. Shell Offshore, Inc., 96 IBLA 149, 94 I.D. 69 (1987); Phillips Petroleum Co., 39 IBLA 393 (1979). A legislative purpose to "require lessees to promptly verify their accounts and ascertain the correctness of payments made within the time provided" has been recognized. Phillips Petroleum Co., *supra* at 398. This limitation has been upheld even where the event giving rise to an overpayment (*e.g.*, a Federal Energy Regulatory Commission order retroactively affecting the valuation of natural gas produced and sold) occurred after the date of the payment itself. Shell Offshore, Inc., *supra*; Phillips Petroleum Co., *supra*. *A fortiori*, the limitation must be applied in a case such as this one where appellant failed to verify its own production figures prior to the running of the 2-year period.

[2] In the alternative, Mobil seeks to apply its time-barred overpayments as an offset to other royalty obligations. It is true that, where a Departmental audit of a lease royalty account discloses that an offshore oil and gas producer has overpaid royalties in one month and underpaid royalties in another month, it has been held proper to offset these amounts against each other despite the fact the audit was conducted after the lapse of 2 years from the date of the overpayment. Shell Oil Co., *supra*. Noting that the statutory 2-year period of limitation was not designed to give the Department a procedural advantage in computing royalty payments, we held in that case that where the Department undertakes to audit a producer more than 2 years after the payments at issue have been made, fundamental principles of fairness require the Department to recognize both the producer's underpayments and overpayments of royalty and to offset the underpayment by the amount of the overpayment. Shell Oil Co., 52 IBLA at 78. However, this offsetting of overpayments which are otherwise time-barred against underpayments has been restricted to payments made within the same period for which a Government audit was conducted. Kerr-McGee Corp., 103 IBLA 338, 339 (1988); Mobil Oil Corp., *supra*. Further, since leases are assessed royalty on an individual basis, it has been noted that the offsetting of overpayments against underpayments is properly confined within the bounds of a single oil and gas lease. Mobil Oil Corp., 65 IBLA at 306 (Burski, A.J. concurring).

In the present case, however, Mobil is seeking more than an offset of past overpayments against past underpayments. Appellant is claiming a credit against future liability. An offset is properly distinguished from a credit or refund. "Offsetting," constituting the crediting of overpayments against past payments due, is permissible only within the timeframe covered by an audit. "Crediting," on the other hand, refers to crediting against future payments due and is governed by the 2-year limitation just as refunds are. Kerr-McGee Corp., 103 IBLA at 339; Mobil Oil Corp., 65 IBLA at 303; see Refunds and Credits Under the Outer Continental Shelf Lands Act, Solicitor's Opinion, 88 I.D. 1090 (1981).

Applying these principles to the present appeal, we must affirm the MMS decision. Since the request for a refund filed by appellant in March 1984 was filed more than 2 years after the overpayment for all production months except February 1982, the refund was properly limited to that month's overpayment. For the same reason, no credit against other underpayments is allowable for the time-barred overpayments from prior months for which no timely request for a refund was filed. With respect to MMS' billing for the admitted underpayment for the months of March and June 1982, we can find no error. In the absence of an MMS audit covering the royalty accounting period in which the now time-barred overpayments were made (April 1981 through January 1982), there is no basis for offsetting the March and June 1982 underpayments (or any other underpayments) by the amount of those overpayments.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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C. Randall Grant, Jr.  
Administrative Judge

I concur:

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David L. Hughes  
Administrative Judge